



January 31, 2002

HOUSE BILL No. 1116

DIGEST OF HB 1116 (Updated January 30, 2002 1:12 PM - DI 103)

Citations Affected: IC 8-1.

Synopsis: IURC enforcement authority. Repeals current provision granting the utility regulatory commission (IURC) enforcement powers over utilities and replaces it with provision authorizing the IURC to impose civil penalties of up to \$5,000 or \$15,000 on public utilities other than telephone companies that provide local service for violations of or noncompliance with utility statutes, rules, and orders. Requires the civil penalties to be: (1) deposited in the commission public utility fund account; (2) refunded directly to customers; or (3) awarded to another utility harmed by the violation or noncompliance. Permits the attorney general to recover attorney fees in successful actions. Authorizes the IURC to order a utility to provide service in emergency situations. Authorizes the IURC to require a public utility to post a reasonable performance bond before operating. Provides that the IURC has jurisdiction over purchases of clean coal technology. Provides that the IURC has jurisdiction over mergers of public utilities, utility companies, and holding companies of public utilities and utility companies. Requires the commission to issue an order not later than 180 days after a petition for approval of a merger is filed.

Effective: July 1, 2002.

Fry, Pelath

January 8, 2002, read first time and referred to Committee on Commerce, Economic Development and Technology.
January 30, 2002, amended, reported — Do Pass.

HB 1116—LS 6645/DI 103+



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January 31, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1116

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6.1. (a) As used in this
3 section, "clean coal technology" means a technology (including
4 precombustion treatment of coal):
5 (1) that is used at a new or existing electric generating facility and
6 directly or indirectly reduces airborne emissions of sulfur or
7 nitrogen based pollutants associated with the combustion or use
8 of coal; and
9 (2) that either:
10 (A) is not in general commercial use at the same or greater
11 scale in new or existing facilities in the United States as of
12 January 1, 1989; or
13 (B) has been selected by the United States Department of
14 Energy for funding under its Innovative Clean Coal
15 Technology program and is finally approved for such funding
16 on or after January 1, 1989.
17 (b) As used in this section, "Indiana coal" means coal from a mine

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whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

(f) The commission has jurisdiction over transactions involving the purchase of clean coal technology from third parties, including the purchase of precombustion coal treated by gasification. The commission's jurisdiction includes the authority to review the terms of a transaction and determine whether the transaction is in the public interest.

SECTION 2. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 83. (a) ~~No~~ This section does not apply to the following:

(1) A corporation organized or operating under IC 8-1-13.

(2) A corporation that:

(A) is organized under IC 23-17; and

(B) has members that are local district corporations (as defined in IC 8-1-13-23).

(b) As used in this section, "control" means the power to direct the management and policies of a public utility, utility company, or holding company through:

(1) ownership of voting securities or stock;

(2) the terms of a contract; or

(3) other means.

The term does not include power to direct management and



1 policies derived from holding an official position or corporate
 2 office with the public utility, utility company, or holding company.
 3 A person that owns, controls, or has the power to vote or the power
 4 to vote proxies that constitute at least twenty percent (20%) of the
 5 total vote power of a public utility, utility company, or holding
 6 company is presumed to have control of the public utility, utility
 7 company, or holding company.

8 (c) As used in this section, "holding company" means a
 9 company that has control over at least one (1) of the following:

10 (1) A public utility (as defined in section 1 of this chapter).

11 (2) A utility company.

12 (d) As used in this section, "person" means:

13 (1) an individual;

14 (2) a firm;

15 (3) a corporation;

16 (4) a company;

17 (5) a partnership;

18 (6) a limited liability company;

19 (7) an association;

20 (8) a trustee;

21 (9) a lessee; or

22 (10) a receiver.

23 (e) As used in this section, "reorganization" means a transaction
 24 that results in:

25 (1) a change in the ownership of a majority of the voting
 26 capital stock of a public utility;

27 (2) a change in the ownership or control of an entity that owns
 28 or controls a majority of the voting capital stock of a public
 29 utility;

30 (3) the merger of two (2) or more public utilities; or

31 (4) the acquisition by a public utility of substantially all the
 32 assets of another public utility.

33 (f) As used in this section, "utility company" means every
 34 corporation, company, partnership, limited liability company,
 35 individual, or association of individuals, their lessees, trustees, or
 36 receivers appointed by a court, that may own, operate, manage, or
 37 control any plant or equipment for the:

38 (1) conveyance of telegraph or telephone messages;

39 (2) production, transmission, delivery, or furnishing of heat,
 40 light, water, or power; or

41 (3) collection, treatment, purification, and disposal in a
 42 sanitary manner of liquid and solid waste, sewage, night soil,



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and industrial waste.

The term does not include a municipality that acquires, owns, or operates any of the foregoing facilities.

(g) A public utility, as defined in section 1 of this chapter, ~~shall~~ may not do any of the following without approval of the commission after a hearing:

(1) Sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~

(2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing.~~
~~And no such~~

(3) Contract for or effect a reorganization of the public utility.

(4) Acquire control of a public utility, utility company, or holding company.

(h) A person may not acquire control of a public utility or a holding company of a public utility without approval of the commission after a hearing.

(i) A holding company that controls one (1) or more public utilities may not acquire control of a utility company without approval of the commission after a hearing.

(j) A public utility, except temporarily or in case of emergency and for a period of not exceeding thirty (30) days, ~~shall~~ may not make any special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility, without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

~~(b)~~ (k) The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the commission.



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(l) The commission shall issue an order not later than one hundred eighty (180) days after a petition seeking approval is filed under this section. If the commission fails to issue an order within one hundred eighty (180) days after the petition is filed, the petition is considered approved.

(m) Nothing contained in this section shall prevent the holding of stock lawfully acquired before May 1, 1913, or prohibit, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

(n) Every contract by any public utility for the purchase, acquisition, assignment, or transfer to it of any of the stock of any other public utility by or through any person, partnership, limited liability company, or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract shall be effective for any purpose.

SECTION 3. IC 8-1-2-115.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 115.5. (a) As used in this section, "account" refers to the commission public utility fund account established under IC 8-1-6.**

(b) As used in this section, "order" means:

- (1) a decision;**
- (2) a decree;**
- (3) a demand;**
- (4) a determination;**
- (5) a direction;**
- (6) an order;**
- (7) a requirement; or**
- (8) a rule;**

of the commission.

(c) As used in this section, "utility" means:

- (1) a public utility over which the commission has jurisdiction; or**
- (2) the department of public utilities created under IC 8-1-11.1.**

(d) The commission may issue an order under subsection (e) only if it finds, after notice and hearing, that a utility has:

- (1) violated a provision of this title;**



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(2) failed to comply with an order; or

(3) failed to comply with an administrative rule adopted by the commission under this title.

(e) After making a finding under subsection (d), the commission may issue an order that does one (1) or more of the following:

(1) Imposes on a utility, other than a telephone company (as defined in IC 8-1-2-88) that provides local exchange telephone service, a civil penalty of:

(1) five thousand dollars (\$5,000) for an initial violation or noncompliance found under subsection (d); or

(2) fifteen thousand dollars (\$15,000) for a second or subsequent violation or noncompliance found under subsection (d).

For purposes of this subdivision, each day that a violation or noncompliance occurs is a separate violation or noncompliance.

(2) Orders a utility to cease and desist from a violation or noncompliance found under subsection (d).

(3) Mandates corrective action by a utility to alleviate a violation or noncompliance found under subsection (d).

(4) Revokes or modifies the terms of a utility's:

(A) certificate of territorial authority;

(B) certificate of public convenience and necessity; or

(C) other permit issued by the commission.

(f) The commission shall consider the following when determining the amount of a civil penalty:

(1) The size of the utility.

(2) The gravity of the violation or noncompliance found under subsection (d).

(3) The good faith of the utility in remedying the violation or achieving compliance after receiving notice of a violation or noncompliance under subsection (d).

(g) This section does not apply to a violation or noncompliance found under subsection (d) that was the result of the following:

(1) Customer provided equipment.

(2) The negligent act of a customer.

(3) An emergency situation.

(4) An unavoidable casualty.

(5) An act of God.

(h) The attorney general shall bring an action to enforce an order of the commission under subsection (e). If the attorney general prevails in an action under this subsection, the attorney general may recover reasonable attorney's fees and court costs.

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(i) Civil penalties under this section are cumulative. A suit for recovery of a civil penalty does not affect:

- (1) the recovery of another civil penalty or forfeiture for a separate violation or noncompliance; or
- (2) a criminal prosecution against:
 - (A) a public utility;
 - (B) an agent, a director, an employee, or an officer of a public utility; or
 - (C) any other person.

(j) The secretary of the commission shall direct that a civil penalty collected under this section be distributed as follows:

- (1) A penalty assessed for a violation that directly affects ratepayers must be refunded directly to the customers of the violating utility in the form of a credit on customer bills.
- (2) A penalty assessed for a violation that directly harms another utility must be awarded directly to the other utility.
- (3) A penalty assessed for a violation that does not directly affect ratepayers or harm another utility must be deposited into the account.

(k) The commission shall use penalties deposited into the account for:

- (1) consumer education;
- (2) promotion of utility competition; or
- (3) any other purpose considered by the commission to further the public interest.

The commission shall report to the regulatory flexibility committee the distribution of deposits under this section.

(l) Penalties deposited into the account may not be included in:

- (1) the calculation of the difference between actual expenditures and appropriations described in IC 8-1-6-1(b); or
- (2) any public utility fee credit.

SECTION 4. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 128. (a) As used in this section, "utility" means:

- (1) a public utility over which the commission has jurisdiction; or
- (2) the department of public utilities created under IC 8-1-11.1.

(b) If the commission:

- (1) determines that the provision of utility service is necessary to:



1 (A) prevent injury to a person; or
 2 (B) alleviate an emergency; and
 3 (2) directs a utility to provide utility service;
 4 the utility shall provide utility service within twenty-four (24)
 5 hours after receiving direction from the commission.

6 (c) Each day that a utility fails to comply with a direction under
 7 subsection (b) is considered a separate violation for purposes of
 8 imposing a civil penalty under section 115.5 of this chapter.

9 SECTION 5. IC 8-1-2-129 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2002]: **Sec. 129. The commission may require a public utility to**
 12 **post a reasonable performance bond as a condition of the public**
 13 **utility's operation in Indiana. The amount of the reasonable**
 14 **performance bond may not exceed two million dollars (\$2,000,000).**

15 SECTION 6. IC 8-1-6-2 IS AMENDED TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2002]: **Sec. 2. (a)** All fees herein prescribed
 17 shall be paid into the treasury of the state of Indiana through the
 18 secretary of the commission and quietused into an account to be known
 19 as the commission public utility fund account. This account shall be
 20 used for enforcing the provisions of IC 8-1-1 and IC 8-1-2 and shall be
 21 utilized only for the purpose of funding the expenses of the commission
 22 and the consumer counselor in amounts not in excess of their
 23 respective appropriations by the general assembly, plus the contingency
 24 fund. All appropriations under this chapter paid out of the commission
 25 public utility fund account shall be subject to the prior approval of the
 26 general assembly, the governor, and the state budget agency.

27 (b) **The secretary of the commission shall deposit into the**
 28 **account the following:**

29 (1) Fees collected from municipalities under IC 8-1-2-85. ~~shall~~
 30 ~~also be deposited in the commission public utility fund account;~~
 31 ~~as if they were fees collected from public utilities under this~~
 32 ~~chapter.~~

33 (2) **Civil penalties collected under IC 8-1-2-115.5.**

34 SECTION 7. IC 8-1-2-115 IS REPEALED [EFFECTIVE JULY 1,
 35 2002].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Technology, to which was referred House Bill 1116, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6.1. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur or nitrogen based pollutants associated with the combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tippie.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place.

(d) The commission may only allow a utility to recover

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preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

(f) The commission has jurisdiction over transactions involving the purchase of clean coal technology from third parties, including the purchase of precombustion coal treated by gasification. The commission's jurisdiction includes the authority to review the terms of a transaction and determine whether the transaction is in the public interest.

SECTION 2. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 83. (a) ~~No~~ **This section does not apply to the following:**

- (1) A corporation organized or operating under IC 8-1-13.**
- (2) A corporation that:**
 - (A) is organized under IC 23-17; and**
 - (B) has members that are local district corporations (as defined in IC 8-1-13-23).**

(b) As used in this section, "control" means the power to direct the management and policies of a public utility, utility company, or holding company through:

- (1) ownership of voting securities or stock;**
- (2) the terms of a contract; or**
- (3) other means.**

The term does not include power to direct management and policies derived from holding an official position or corporate office with the public utility, utility company, or holding company. A person that owns, controls, or has the power to vote or the power to vote proxies that constitute at least twenty percent (20%) of the total vote power of a public utility, utility company, or holding company is presumed to have control of the public utility, utility company, or holding company.

(c) As used in this section, "holding company" means a company that has control over at least one (1) of the following:

- (1) A public utility (as defined in section 1 of this chapter).**
- (2) A utility company.**

(d) As used in this section, "person" means:

- (1) an individual;**
- (2) a firm;**
- (3) a corporation;**
- (4) a company;**
- (5) a partnership;**



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- (6) a limited liability company;
- (7) an association;
- (8) a trustee;
- (9) a lessee; or
- (10) a receiver.

(e) As used in this section, "reorganization" means a transaction that results in:

- (1) a change in the ownership of a majority of the voting capital stock of a public utility;
- (2) a change in the ownership or control of an entity that owns or controls a majority of the voting capital stock of a public utility;
- (3) the merger of two (2) or more public utilities; or
- (4) the acquisition by a public utility of substantially all the assets of another public utility.

(f) As used in this section, "utility company" means every corporation, company, partnership, limited liability company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment for the:

- (1) conveyance of telegraph or telephone messages;
- (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that acquires, owns, or operates any of the foregoing facilities.

(g) A public utility, as defined in section 1 of this chapter, ~~shall~~ **may not do any of the following without approval of the commission after a hearing:**

- (1) Sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~
- (2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing. And no such~~
- (3) **Contract for or effect a reorganization of the public utility.**
- (4) **Acquire control of a public utility, utility company, or holding company.**

(h) A person may not acquire control of a public utility or a

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holding company of a public utility without approval of the commission after a hearing.

(i) **A holding company that controls one (1) or more public utilities may not acquire control of a utility company without approval of the commission after a hearing.**

(j) A public utility, except temporarily or in case of emergency and for a period of not exceeding thirty (30) days, ~~shall~~ **may not** make any special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility, without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

~~(b)~~ **(k)** The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the commission.

(l) The commission shall issue an order not later than one hundred eighty (180) days after a petition seeking approval is filed under this section. If the commission fails to issue an order within one hundred eighty (180) days after the petition is filed, the petition is considered approved.

~~(c)~~ **(m)** Nothing contained in this section shall prevent the holding of stock lawfully acquired before May 1, 1913, or prohibit, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

~~(d)~~ **(n)** Every contract by any public utility for the purchase, acquisition, assignment, or transfer to it of any of the stock of any other public utility by or through any person, partnership, limited liability company, or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such

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stock upon the books of the corporation pursuant to any such contract shall be effective for any purpose."

Page 2, line 12, after "Imposes" insert **"on a utility, other than a telephone company (as defined in IC 8-1-2-88) that provides local exchange telephone service,"**.

Page 2, line 12, delete "of not more than twenty-five" and insert **"of:**

(1) five thousand dollars (\$5,000) for an initial violation or noncompliance found under subsection (d); or

(2) fifteen thousand dollars (\$15,000) for a second or subsequent violation or noncompliance found under subsection (d)."

Page 2, delete line 13.

Page 2, line 14, delete "noncompliance found under subsection (d)." and block left beginning with "For".

Page 2, line 41, after "(e)." insert **"If the attorney general prevails in an action under this subsection, the attorney general may recover reasonable attorney's fees and court costs."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1116 as introduced.)

FRY, Chair

Committee Vote: yeas 8, nays 4.

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